

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDRIC JOEL COHEN, M.D., P.C.
(Evelisette Hernandez),

Plaintiff,

V.

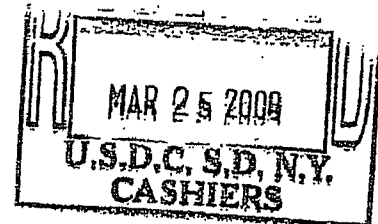
UNICARE LIFE & HEALTH INSURANCE
COMPANY,

Defendant.

JUDGE BAER

08 CV 3029

NOTICE OF REMOVAL



PLEASE TAKE NOTICE THAT, UniCare Life & Health Insurance Company ("Defendant" or "UniCare"), Defendant in the above-captioned proceeding, by its attorneys Bracewell & Giuliani LLP, respectfully submits this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 in order to remove this matter from the Civil Court of the City of New York, New York County, to the United States District Court for the Southern District of New York, and in support thereof affirms as follows:

1. On February 22, 2008, Fredric Joel Cohen, M.D., P.C. ("Plaintiff") filed his Endorsed Complaint against UniCare in the Civil Court of the City of New York, New York County, Index No. 011974 CVN 2008. On February 25, 2008, UniCare received a copy of Plaintiff's Endorsed Complaint ("Complaint"). A true and correct copy of the Summons and Complaint is attached hereto as Exhibit A in accordance with 28 U.S.C. § 1446(a), and is incorporated by reference herein. In addition, a true and correct copy of the Answer is attached hereto as Exhibit B in accordance with Local Rule 81.1(b), and is incorporated by reference herein. Exhibits A and B represent all records and proceedings in the State court.

2. This Notice of Removal is being filed within thirty (30) days of receipt of the Complaint, and is thus timely filed pursuant to 28 U.S.C. § 1446(b).

3. A true and correct copy of this Notice of removal is also being filed promptly with the Clerk of the Civil Court of the City of New York, New York County, thereby effecting removal pursuant to 28 U.S.C. § 1446(d).

Grounds for Removal

4. UniCare is entitled to remove the State court action to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, because this action is based on a federal question and this Court has original jurisdiction.

5. Plaintiff's claims are preempted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a) and 1144(a).

6. Plaintiff seeks to recover damages arising out of a determination regarding benefits under an ERISA-regulated plan, which is a claim exclusively maintainable under 29 U.S.C. § 1132(a). Plaintiff's claims are preempted, as a matter of law, by ERISA, as 29 U.S.C. § 1132(a) governs actions under ERISA and provides the exclusive remedy for actions under an ERISA-regulated plan.

7. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 and ERISA, 29 U.S.C. §§ 1132(a) and 1144(a).

8. The United States District Court for the Southern District of New York is the appropriate court to which this action should be removed because this district embraces the actions filed in the Supreme Court of the State of New York, County of New York.

Jury Demand

9. Plaintiff has not demanded a jury in the State court action.

WHEREFORE, Defendant respectfully requests that the State court action be removed from the Supreme Court of the State of New York, County of New York, to this Court.

Dated: New York, New York
March 25, 2008

BRACEWELL & GIULIANI LLP

By:



Rachel B. Goldman

1177 Avenue of the Americas
New York, New York 10036
(212) 508-6135
(212) 938-3835 (facsimile)

ATTORNEYS FOR DEFENDANT UNICARE LIFE &
HEALTH INSURANCE COMPANY

011974 CUN 2008
Filed N.Y. County, NY
02/22/2008

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. _____

FREDRIC JOEL COHEN, M.D., P.C.
(Evelisette Hernandez)

SUMMONS

Plaintiff,

- against -

Plaintiff's Address

61 East 66th Street
New York, New York 10021

The basis of the venue designated is:
Plaintiffs and Defendant's places of business.

UNICARE LIFE & HEALTH INSURANCE COMPANY

Defendant.

To the above named defendant _____

X

You are hereby summoned to appear in the Civil Court of the City of New York, County of New York at the office of the said Court at 111 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and to file your answer to the - endorsed summons- with the Clerk: upon your failure to answer judgment will be taken against you for the sum of \$ 21,955.20 with interest thereon from the 19th day of June, 2005 together with the costs of this action.

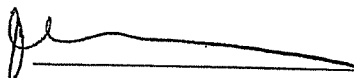
Dated: February 19, 2008

Defendants' Address:

233 South Wacker Drive

Suite 3900

Chicago, IL 60606



Robert A. Santucci

Attorneys for Plaintiffs:

SANTUCCI & ASSOCIATES

110 Wall Street - 11th Floor

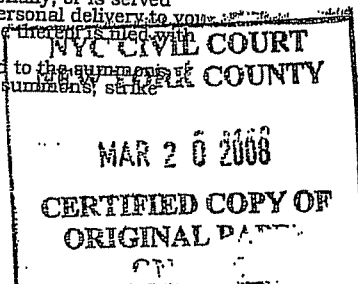
New York, New York 10005-3817

(212) 709-8357

Note. The law provides that: (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or

(b) If this summons is served by delivery to any other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you, within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

*If the cause of action is for money only and a formal complaint is not attached to the summons, strike the words "annexed complaint." If a formal complaint is attached to the summons, strike the words "endorsed summons."



ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is follows:

Jurisdiction and Venue: Plaintiff is a professional corporation with a place of business in the County, City and State of New York. Upon information and belief, defendants are domestic corporations with places of business at 233 South Wacker Drive, Suite 3900, Chicago, IL 60606 and both transact business within the City and State of New York. This transaction arose in the County, City, and State of New York.

First Cause of Action: This is an action for breach of contract. Heretofore defendant or their agents issued to Evelisette Hernandez medical insurance, group number 113838M079, claim number 05251640123. That on about or between March 29, 2005 and May 19, 2005 plaintiff provided medical services to Evelisette Hernandez and submitted medical claims to the defendant, of which \$ 21,955.20 the defendant refused to pay.

Attorneys for Plaintiff:
SANTUCCI & ASSOCIATES
110 Wall Street
11th Floor
New York, New York 10005-3817
(212) 709-8357

P.O. BOX 80804
CITY OF INDUSTRY, CA
91718-0004

EXPLANATION OF BENEFITS

ISSUE DATE	PAGE	GROUP
October 19, 2005	00002 OF 00004	000227

FREDERIC J COHEN
61 E 68TH ST
NEW YORK, NY 10021

Sequence Number: 112495859 200500001
Provider ID: 112495859
NETWORK PROVIDER: N
FOUNDATION PHYSICIAN: N

Patient Name: HERNANDEZ, EVELISSETTE ID Number: 888455859 Acct No: ALPHA Group No: 113888M079 Claim ID: 05251540123								
SERVICE DATE(S)	PROCEDURE NUMBER	UNITS OF SERVICE	BILLED AMOUNT	ALLOWED AMOUNT	NOT ALLOWED AMOUNT	DEDUCTIBLE AMOUNT	COINSURANCE COPAYMENT AMOUNT	CLAIMS PAYMENT
03/29/05	99245	001	1,500.00	550.00	550.00/01		220.00/02	330.00
06/19/05	15734	001	15,000.00	15,000.00			1,035.20/02	13,964.80
06/19/05	49550	001	7,500.00	3,000.00	4,500.00/01			3,000.00
06/19/05	49585	001	7,500.00	0.00	7,500.00/03			0.00
06/19/05	14001	001	5,000.00	2,250.00	2,750.00/01			2,250.00
06/19/05	99070	001	5,000.00	0.00	5,000.00/03			0.00
TOTAL THIS CLAIM			41,500.00	20,800.00	20,700.00	0.00	1,255.20	19,544.80
FOR INFORMATION CALL: 1-800-438-6105								

MESSAGES:

- 01 - This amount exceeds the customary and reasonable expense allowed and is the member's responsibility to pay.
- 02 - This balance is the member's coinsurance responsibility.
- 03 - This procedure is considered incidental when billed with related primary procedures, and additional charges are not payable. For reconsideration of this expense, please follow the steps provided on the back of this form.
- * - Unicare encourages and supports the submission of electronic transactions. For information regarding electronic transactions, please contact EDI Services at www.unicare.com.

THIS IS NOT A BILL

SEE LAST PAGE FOR IMPORTANT INFORMATION

Fredric Joel Cohen M.D., P.C.

DIPLOMAT AMERICAN BOARD of PLASTIC SURGERY

61 EAST 66TH STREET
NEW YORK, NEW YORK 10021
(212) 452-0077 FAX # 212-452-9855

UNICARE
PO BOX 4458
CHICAGO IL, 60680
MEDCALL=800- 814-0041
P.O. BOX 3000

GROUP# 113838M079
I.D. # 830A55991

PATIENT'S NAME HERNANDEZ EVELISETTE
590 EAST 166TH STREET APT 3H
BRONX N.Y. 10456

1-718-620-2010 CELL# = 646-258-4526 D.D. LOUIS HERNANDEZ CELL=917-681-3361

CONSULTATION 3-29-2005

49585-REPAIR OF UMBILICAL HERNIA, 49565- REPAIR OF VENTRAL-INCISIONAL HERNIA, 15734-50 TORN
MUSCLE REPAIR ABDOMINAL MUSCLES,
ICD-9 728.2 MUSCULAR WASTING, ATROPHY, BILATERAL RECTI, 553.1 UMBILICAL HERNIA, 553.20
EPIGASTRIC-VENTRAL HERNIA, MULTIPLE SITES TRUNK...942.39, 728.84 SYMPTOMATIC DIASTASIS RECTI

STATEMENT OF SURGICAL SERVICES OF 5-19-2005

99245 3-29-05 COMPREHENSIVE INITIAL CONSULTATION	\$1,500.00
15734-50 REPAIR OF ATROPHIED RECTI WITH MUSCLE FLAPS	\$15,000.00
49560 REPAIR OF INITIAL REDUCIBLE VENTRAL HERNIA	\$ 7,500.00
49585 REPAIR OF UMBILICAL HERNIA WITH ATTENUATION	\$7,500.00
14001 RECONSTRUCTION WITH NEO-UMBILICOPLASTY	\$5,000.00
99070 COST OF STERILE SUPPLIES AND DISPOSABLES	\$5,000.00
TOTAL DUE THIS OFFICE	\$41,500.00

RESPECTFULLY SUBMITTED;

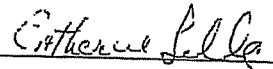
FREDRIC J. COHEN MD
FED. TAX. I.D. # 11-249-5859

STATE OF NEW YORK
COUNTY OF NEW YORK) ss.:

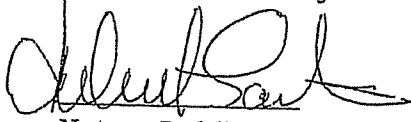
1, Catherine Lella, being duly sworn, say: I am not a party to the action, am over 18 years of age and reside in Suffolk County, New York.

On February 19, 2008, I served a copy of the within summons and endorsed complaint by depositing a true copy thereof, in a post-paid wrapper under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

UNICARE LIFE & HEALTH INSURANCE COMPANY
Suite 3900
233 South Wacker Drive
Chicago, IL 60606


Catherine Lella

Sworn to before me on the
19th day of February 2008


Notary Public

ROBERT A. SANTUCCI
NOTARY PUBLIC, ST. of N.Y.
#02SA4671860
COMMISSION EXPIRES 12/31/11

Court of , NEW YORK

11974 CVN 2008

(Page 1)

APPEARANCE AND EXECUTION DOCKET

TITLE OF CASE		ATTORNEYS	ACTION
FREDRIC JOEL COHEN M.D. P		SANTUCCI & ASSOCIATES	SUMMONS & COMPLAINT
VS			Comments/Judges
NICARE LIFE & HEALTH INS			
Date of	Page	Pleadings Filed, Orders and Judgments	Amount
02/22/08		SUMMONS AND COMPLAINT FILED	45.00Pd
03/10/08		CORRESPONDENCE FILED	
TOTAL			45.00

2008 MAR 20 1 22 PM

NEW YORK
SPRING
2008

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

FREDRIC JOEL COHEN, M.D., P.C.
(Evelisette Hernandez)

Plaintiff,

-against-

UNICARE LIFE & HEALTH INSURANCE
COMPANY

Defendant.

Index No. 011974CVN2008

ANSWER

Defendant UniCare Life & Health Insurance Company ("UniCare"), by its attorneys, Bracewell & Giuliani LLP, as and for its Answer to the Endorsed Complaint ("Complaint"), alleges as follows:

1. UniCare denies each and every allegation set forth in the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

2. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

3. Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

4. Plaintiff's claims are barred by the specific terms of the contract.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred by Plaintiff's failure to mitigate.

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NEW YORK
CLERK OF COURT

(1094)

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

6. Plaintiff has failed to submit to UniCare sufficient evidence to establish that he is entitled to further benefits under the health insurance policy at issue.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

7. Plaintiff's claims are barred because he lacks standing to seek enforcement of the terms of a contract between UniCare and its insured, Evelisette Hernandez.


AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

8. Plaintiff's claims are preempted by the Employee Retirement Income Security Act of 1974, as amended.

WHEREFORE, Defendant UniCare Life & Health Insurance Company respectfully requests that the Court enter judgment dismissing the Endorsed Complaint in its entirety and awarding Defendant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 20, 2008

BRACEWELL & GIULIANI LLP

By: 
Rachel B. Goldman

1177 Avenue of the Americas
New York, New York 10036
(212) 508-6135
(212) 938-3835 (facsimile)

ATTORNEYS FOR DEFENDANT UNICARE LIFE &
HEALTH INSURANCE COMPANY

AFFIRMATION OF SERVICE BY MAIL

RACHEL B. GOLDMAN, an attorney admitted to practice before the courts of the State of New York, affirms, pursuant to CPLR Rule 2106 and subject to the penalties of perjury, that on the 20th day of March, 2008, I served the annexed papers upon plaintiff, by sending a copy of said document by way of regular mail, addressed to:

Robert A. Santucci
Attorneys for Plaintiffs
Santucci & Associates
110 Wall Street, 11th Floor
New York, New York 10005

the address within the State theretofore designated by that attorney for that purpose.

Dated: New York, New York
March 20, 2008


RACHEL B. GOLDMAN

Index No. 011974CVN2008

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

FREDRIC JOEL COHEN, M.D., P.C.
(Evelisette Hernandez)

Plaintiff,

-against-

UNICARE LIFE & HEALTH INSURANCE
COMPANY.,

Defendant.

ANSWER

*BRACEWELL & GULLIANI LLP
Attorneys for Plaintiff
Cannon Point North*

*1177 Avenue of the Americas
New York, New York 10036
(212) 508-6100*

Due and timely service is hereby admitted.
New York, N.Y., 200...

..... Esq.

Attorney for